

Date: 20081113

Docket: IMM-2265-08

Citation: 2008 FC 1259

Toronto, Ontario, November 13, 2008

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

KARLA DEL CARMEN HERNANDEZ GONZALEZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicant is an adult woman, a citizen of Mexico. She entered Canada from Mexico on January 20, 2007 and made a claim for refugee protection status two days later. A hearing respecting her claim was held on January 9, 2008, the Applicant gave her evidence with the assistance of a Spanish/English interpreter. By a written decision dated April 30, 2008, the Applicant's claim for refugee protection status was rejected. This is a judicial review of that decision.

[2] For the reasons that follow, I find that the application is dismissed.

[3] The Applicant submits and I agree that while many issues have been raised, the only determinative issue is whether there was an internal flight alternative (IFA) and, in particular, whether the Applicant, who had been residing in San Rafael, Veracruz and later in Xalapa could remove herself to the Federal District of Mexico City and live safely there.

[4] The Applicant's evidence was that she lived in a common-law relationship with a man in San Rafael and that he beat her and caused a miscarriage. The Applicant alleges that she denounced this man to the police but they did nothing and harassment continued including an attempt by this man to run her over with his truck, an event which required her to be hospitalized. The Applicant alleges that she again denounced this man to the police who, again, did nothing. The Applicant moved to Xalapa and sought the assistance of a psychologist. Her common-law partner continued to place threatening phone calls. The Applicant therefore came to Canada. The Board Member accepted this evidence without comment. It must be taken as credible.

[5] The Board Member determined that the Applicant's claim for refugee status should be rejected because there was an internal flight alternative, Mexico City. At page 9 of his Reasons, the Member said:

In assessing all of the evidence, the panel recognizes that there may be areas of Mexico where serious efforts to provide adequate protection as a result of criminality and corruption are not being made but chooses to rely on the evidence that indicates that Mexico, particularly in the Federal District, which includes Mexico City is making serious efforts to address these issues.

Given the above analysis, the panel determines that there is not a serious possibility that the claimant would be persecuted should she

return to Mexico and live in Mexico City. This satisfies the first prong of the test of an IFA.

[6] It is well understood that, in considering an internal flight alternative, the Board is to consider whether there is a safe haven for claimants in their own country, where they would be free from persecution, in which case they are to avail themselves of it unless they can show, objectively that is unreasonable to do so (*Sanchez v. Canada (Minister of Citizenship and Immigration)* 2007 FCA 99 at para 16).

[7] The Federal Court of Appeal in *Carillo v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 94, in considering the issue of state protection wrote at paragraphs 17 to 19 that the Applicant bears the burden of adducing evidence of inadequate state protection and the burden of persuading the trier of fact that such evidence demonstrates that state protection is inadequate. At paragraphs 20 to 26 the Court wrote that the trier of fact is to consider the evidence on a standard of proof which is not higher than that established by the normal standard of balance of probabilities.

[8] In the present matter the Member set out in detail the basis upon the evidence was considered both as to the situation in Mexico City and the Applicant's concerns as to the responses that the police made in respect of her denunciations and the influence that her former common law partner may have had over the police.

[9] The Member's reasons specify with reasonable particularity the documentary evidence taken into consideration sufficient to indicate that the Member considered the Applicant's evidence

and the other evidence in the case so as to arrive at a considered conclusion giving weight to all the evidence.

[10] It is clear that the Member was alert to the necessity of looking not only at what laws and institutions may have been put in place but also whether they are adequately effective in providing protection. At page 7 of the Reasons percentage statistics are set out as to where persons in the Federal District sought assistance not only from the Prosecutor's offices but other agencies as well. The reasons of the Federal Court of Appeal at paragraph 34 of *Carillo, supra*, indicate that not only is protection to be offered by police agencies to be considered but other agencies as well. This was done by the Member.

[11] In view of the Supreme Court of Canada's decision in *Dunsmuir v. New Brunswick* 2008 SCC 8 I find that it was reasonable for the Member to conclude that there is not a serious possibility that the Applicant would be persecuted should she return to Mexico and live in Mexico City.

[12] Applicant's Counsel raised a further issue based on the second branch of the considerations to be given in respect of an IFA namely, was it reasonable to require the Applicant to seek an IFA in Mexico City. The report of a psychologist, Dr. Pilowsky, who examined the Applicant, opines that if the Applicant were to be returned to Mexico (presumably anywhere in Mexico including Mexico City) the Applicant would be led to full-blown anxiety attacks along with severe inability to cope with the debilitating fear she will experience once returned to Mexico. The Member stated that there was no persuasive evidence that treatment would be lacking in Mexico, noting that the

Applicant had already availed herself of such treatment in Mexico earlier. The Member concluded that the Applicant, a reasonably well-educated person, could secure employment in Mexico City and that there was evidence that her parents would support her financially. The Member concluded that it would not be unduly harsh to require the Applicant to live alone in Mexico City.

[13] Again, given the *Dunsmuir* standard; the Member's conclusions are within the acceptable range of reasonable conclusions and should not be set aside.

[14] The application is dismissed. The matter is fact specific, there is no question for certification. There are no special reasons to award costs.

JUDGMENT

For the Reasons provided:

THIS COURT ADJUDGES that:

1. The application is dismissed;
2. There is no question for certification;
3. No costs are awarded.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2265-08

STYLE OF CAUSE: KARLA DEL CARMEN HERNANDEZ GONZALEZ v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: NOVEMBER 12 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** HUGHES J.

DATED: NOVEMBER 13, 2008

APPEARANCES:

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